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09/929,235	08/13/2001	Stephen F. Gass	SDT 314	8810
27630	7590	02/12/2004	EXAMINER	
SD3, LLC 22409 S.W. NEWLAND ROAD WILSONVILLE, OR 97070			DRUAN, THOMAS J	
			ART UNIT	PAPER NUMBER
			3724	14
DATE MAILED: 02/12/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/929,235

Applicant(s)

GASS ET AL.

Examiner

Thomas J. Druan, Jr.

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 6,7 and 16-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2,5,6,8,9,12</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

It should be noted that for the purpose of this office action the below rejections under 35 U.S.C. 101 (double patenting) are being made under the assumption that the applications were not commonly owned at the time of applicant's invention. It should further be noted that rejections under 35 U.S.C 102(a) and 102(e) using the same U.S. Patent Applications/Publications have not been made because they do not qualify as prior art as their filing dates are not before the filing date of the instant application.

Additionally, it should be noted that the below double patenting rejections are based upon known and available co-pending applications and although it is believed that all appropriate rejections have been made, Applicant's help in determining all appropriate double patenting rejections with all of Applicant's applications is requested because of the large number of similar applications.

### ***Election/Restrictions***

1. Applicant's election without traverse of Group I (claims 1-5, 8-12, 15 and 29) in Paper No. 13 is acknowledged. Claims 13 and 14 will also be examined with the elected group.

### ***Priority***

2. Acknowledgment is made of applicant's claim for priority under 35 U.S.C. 119(e). See 37 CFR 1.78.

### **SPECIAL CIRCUMSTANCES OF THIS APPLICATION:**

3. Even if a copending application is listed as a parent to the instant application and material information is technically of record in one or more parent applications, the unusually large number of applicant's cases in varying stages of the examination process might result in one or more parent applications not being readily available for review, or material information of record not being readily apparent. Applicant should point out such material information to the examiner of the instant application if the criteria for materiality applies, and if the examination record provides applicant reason to believe such information has not been considered by the examiner.

If, to the best of applicant's knowledge, applicant has no previous patent or copending application, which would meet the definition of "material," applicant is requested to make a statement of that fact of record.

Any parent application labeled as a CIP or Divisional is assumed to claim a patentably distinct invention from the claims of this application and therefore the issue of double patenting has not been considered and the rights to priority are limited to the common disclosed subject matter unless it is brought to the examiners attention that some claims are not distinct.

37 CFR 1.56 is cited here:

#### **37 CFR 1.56. Duty to disclose information material to patentability.**

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
- (2) It refutes, or is inconsistent with, a position the applicant takes in:
  - (i) Opposing an argument of unpatentability relied on by the Office, or
  - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

### ***Double Patenting***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent

and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1 & 13-15 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 17 of copending Application No. 10/052,705. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are all drawn towards a table saw having a blade, an adjustment mechanism, a brake mechanism, and a brake positioning system used to position the brake in an operable position relative to the blade as the adjustment mechanism adjusts the position of the blade.

6. Claims 1, 13 & 15 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/052,705. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims both refer to a brake positioning system used with a saw blade that is adjusted vertically up and down.

These are provisional obviousness-type double patenting rejections because the conflicting claims have not in fact been patented.

### **Comments on Commonly Assigned Applications**

7. Claims 1 & 13-15 are directed to an invention not patentably distinct from the claims, see above, of commonly assigned applications, for the reasons stated above.

The U.S. Patent and Trademark Office normally will not institute an interference between applications or a patent and an application of common ownership (see MPEP § 2302). Commonly assigned applications, discussed above, would form the basis for a rejection of the noted claims under 35 U.S.C. 103(a) if the commonly assigned case qualifies as prior art under 35 U.S.C. 102(f) or (g) and the conflicting inventions were not commonly owned at the time the invention in this application was made. In order for the examiner to resolve this issue, the assignee is required under 35 U.S.C. 103(c) and 37 CFR 1.78(c) to either show that the conflicting inventions were commonly owned at the time the invention in this application was made or to name the prior inventor of the conflicting subject matter. Failure to comply with this requirement will result in a holding of abandonment of the application.

A showing that the inventions were commonly owned at the time the invention in this application was made will preclude a rejection under 35 U.S.C. 103(a) based upon the commonly assigned case as a reference under 35 U.S.C. 102(f) or (g), or 35 U.S.C. 102(e) for applications filed on or after November 29, 1999.

***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. Claim 12 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification does not enable one skilled in the art to make the brake pawl accelerate at  $300 \text{ m/s}^2$  or more.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(f) he did not himself invent the subject matter sought to be patented.

11. Claims 1-5 & 8-15 are rejected under 35 U.S.C. 102(f) because the applicant did not invent the claimed subject matter.

It is not clear who actually invented the subject matter of claims 1-5 & 8-15 because each of the above co-pending applications have different inventive entities.

Therefore, it is not clear which portion of the applications where invention by the same inventive entity of the instant application.

12. Claim 29 is rejected under 35 U.S.C. 102(b) as being anticipated by US 5,943,932 to Sberveglieri.

Sberveglieri discloses the invention as claimed including a table saw comprising: a work surface 14 and a rotatable blade 44 adapted to raise and lower relative to the work surface around a pivot point 64, where the rotation of the blade defines a feed direction for a workpiece to be fed into the saw, and where the pivot point is downstream of the blade relative to the feed direction (fig. 2).

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 1-5, 8 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 1,811,066 to Tannewitz in view of US 3,785,230 to Lokey.

Tannewitz discloses the invention substantially as claimed including a table saw comprising: a frame 1 including a table 2 defining a work surface; a rotatable blade 5 coupled to the frame and extendable up through the work surface; an adjustment



Art Unit: 3724

mechanism 3/19 configured to adjust the position of the blade relative to the table; a brake mechanism configured to engage and stop the blade; and a brake positioning system 8/11 configured to adjust the position of the brake mechanism to maintain the brake mechanism in an operative position relative to the blade as the position of the blade is adjusted. The adjustment mechanism is configured to adjust the vertical and angular positions of the blade relative to the table. The blade is coupled to the frame by a support structure 17 that is selectively positionable relative to the frame, and the brake mechanism is coupled to the support structure. The support structure includes an arbor block adapted to support the brake mechanism and a rotatable arbor 6 that holds the blade.

Tannewitz does not disclose a detection system configured to detect contact between a person and the blade; and brake mechanism is actuated upon detection of contact between the person and the blade. Lokey teaches the use of a safety system for a saw that senses the capacitance on a saw blade 113 and when a certain level is reached, a brake pawl 125 is actuated to engage the cutting teeth of the saw blade to instantaneously stop the saw blade (column 2, lines 32-62). Although the safety system of Lokey is set up to detect proximity instead of contact, only the values of the electrical components of Lokey would need to be altered in order for the sensor to sense contact, and changing those values to detect contact would have been obvious to one skilled in the art at the time of the invention in order to avoid triggering the safety system when the user is close to the blade but not in danger of being cut. It would have been obvious to one skilled in the art at the time of the invention to use the brake pawl and safety

Art Unit: 3724

system of Lokey to detect contact of a user and the blade of Tannewitz in order to make the saw of Tannewitz safer.

15. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tannwitz in view of Lokey.

Tannewitz in view of Lokey discloses the invention substantially as claimed, but uses a brake pawl that is actuated linearly into the saw blade as opposed to being pivoted into the saw blade. It would have been obvious to one skilled in the art at the time of the invention to make the solenoid of Lokey push on a pawl that is pivoted into the saw blade since pivoting the pawl would allow the pawl to move in an arc towards the saw blade and would provide for more surface area of the pawl to contact the blade since there would be more of a component of motion of the pawl towards the center of the blade.

16. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tannewitz in view of Lokey.

Tannewitz in view of Lokey discloses the invention substantially as claimed, but does not disclose the amount of time it takes to stop the saw blade after contact is detected; however, the brake is described as being "instantaneously actuated." The amount of time it would take for the brake pawl to contact the blade depends on the distance between the brake pawl and the blade as well as the acceleration of the brake pawl into the blade. It would have been obvious to one skilled in the art to minimize the

Art Unit: 3724

amount of time it would take to reach the blade and maximize the acceleration of the pawl into the teeth in order to stop the blade as quickly as possible, and stopping the blade within 5 milliseconds after contact is detected by accelerating the pawl at  $300 \text{ m/s}^2$  would be possible using very close spacing and a fast solenoid, both of which would have been obvious to one skilled in the art to use in order to provide the desired safe stopping time.

### ***Conclusion***

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Druan, Jr. whose telephone number is 703-308-4200. The examiner can normally be reached on M-F (8:30-6:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 703-308-1082. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3724

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
tjd

February 9, 2004

  
BOYER ASHLEY  
PRIMARY EXAMINER